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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/616,441	07/09/2003	Kevin L. Parsons	8342-89538	9148
24628	7590	10/05/2004	EXAMINER	
WELSH & KATZ, LTD 120 S RIVERSIDE PLAZA 22ND FLOOR CHICAGO, IL 60606				WARD, JOHN A
		ART UNIT		PAPER NUMBER
		2875		

DATE MAILED: 10/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

AK

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/616,441	PARSONS, KEVIN L.
	Examiner	Art Unit
	John A. Ward	2875

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) Responsive to communication(s) filed on 19 July 2004.  
 2a) This action is **FINAL**.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) Claim(s) 48-76 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 48-76 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
     Paper No(s)/Mail Date \_\_\_\_\_

4) Interview Summary (PTO-413)  
     Paper No(s)/Mail Date. \_\_\_\_\_.  
 5) Notice of Informal Patent Application (PTO-152)  
 6) Other: \_\_\_\_\_.

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 48-52, 59 and 50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dalton et al (US 6,070,990) in view of Herman (US 5,685,630).

Regarding claim 48, Dalton et al ('990) discloses a flashlight comprising of a light emitting diode 36 having a first and second leads 38, 40, a power source 30 having a first and second side, a body 21 made of polymeric material (column 2, lines 14-20) to receive the battery (figure 3) and column 3, lines 1-9 teaches that a switch is operable to closes a circuit including a light source and power supply.

Regarding claims 49, 50, 51 and 60, Dalton et al discloses that the body 21, at least one sides covers 12, is made of polymeric material, and at least one cover is made of a polycarbonate (column 2, lines 12-20).

Regarding claim 52 Dalton discloses a decorative element 20 is placed beneath on a side cover (figure 2).

Regarding claim 59, Dalton et al in figure 3 shows how the frames and side covers are integrally formed together.

Regarding claims 48-52, Dalton et al does not disclose the body of the cover having at least one or two sides being made of a translucent material.

Regarding claims 48-52, Herman ('630) discloses a battery-operated lighting device having a first and second body 1, 1A, a battery 11A, a light source 15A and in claim 1 of the prior art of Herman teaches that at least one of the bodies are translucent.

Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to combine the flashlight of Dalton et al with the battery operated lighting device of Herman having a translucent body in order to provide a light that have two basic enclosure elements made of a polymeric material and having labeling as taught by Dalton et al (abstract).

Claim 62 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dalton et al (US 6,070,990) in view of Herman (US 5,685,630).

Regarding claim 62, Dalton et al ('990) discloses a flashlight comprising of a light emitting diode 36 having a first and second leads 38, 40, a power source 30 having a first and second side, a body 21 made of polymeric material (column 2, lines 14-20) to receive the battery (figure 3) and column 3, lines 1-9 teaches that a switch is operable to closes a circuit including a light source and power supply.

Regarding claim 62, Dalton et al does not disclose the body of the cover having at least one or two sides being made of a translucent material.

Regarding claim 62, Herman ('630) discloses a battery-operated lighting device having a first and second body 1, 1A, a battery 11A, a light source 15A and in claim 1 of the prior art of Herman it teaches that at least one of the bodies are translucent.

Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to combine the flashlight of Dalton et al with the battery operated lighting device of Herman having a translucent body in order to provide a light that have two basic enclosure elements made of a polymeric material and having labeling as taught by Dalton et al (abstract).

Claim 65, 66 and 70 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dalton et al (US 6,070,990) in view of Herman (US 5,685,630).

Regarding claim 65, Dalton et al ('990) discloses a flashlight comprising of a light emitting diode 36 having a first and second leads 38, 40, a power source 30 having a first and second side, a body 21 made of polymeric material (column 2, lines 14-20) to receive the battery (figure 3) and column 3, lines 1-9 teaches that a switch is operable to closes a circuit including a light source and power supply.

Regarding claim 66 Dalton et al discloses a decorative element 20 is placed beneath on a side cover (figure 2).

Regarding claim 70, Dalton et al in figure 3 shows how the frames and side covers are integrally formed together.

Regarding claims 65, 66, and 70, Dalton et al does not disclose the body of the cover having at least one or two sides being made of a translucent material.

Regarding claim 65, 66, and 70, Herman ('630) discloses a battery-operated lighting device having a first and second body 1, 1A, a battery 11A, a light source 15A

and in claim 1 of the prior art of Herman teaches that at least one of the bodies are translucent.

Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to combine the flashlight of Dalton et al with the battery operated lighting device of Herman having a translucent body in order to provide a light that have two basic enclosure elements made of a polymeric material and having labeling as taught by Dalton et al (abstract).

Claims 53-58, 60, 61, 63 and 64 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dalton et al in view of Herman as applied to claims 49 and 52 above, and further in view of Vandenbelt et al (US 5,457,613) and in view of Holat (US 6,036,810).

Regarding claims 53-58, 60, 61, 63 and 64 Dalton et al in view of Herman discloses all the limitations of the claimed invention as cited above including a light source, body and power source, but does not discloses the a decorative foil placed beneath at least one translucent side cover.

Regarding claims 53-55, 61 and 63, Vandenbelt et al ('613) discloses a card light flashlight comprising of a light source 26, a power source 22, and a cover 54 that houses a casing 14 that houses the light source and power source and column 4, lines 2-7, teaches that an imprinted media may be apply to the casing.

Regarding claims 53 and 55-57 does not disclose a holographic foil sheet.

Regarding claims 53 and 55-57, Holat ('810) discloses holographic foil sheet 10 having a decorative image 12.

Regarding claims 58, 60 and 64, Vandenbelt in view of Holat does not disclose that the covers are dent resistant and made of a polycarbonate.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the casing of a polycarbonate material being dent resistant, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability of the intended use as a matter of obvious design choice. *In re Leshin, 125 USPQ 416*.

Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to combine the LED flashlight of Dalton et al with the decorative flashlight of Vandenbelt et al along with the holographic stamp of Holat in order to provide a flashlight that is small and decorative as taught by Vandenbelt (column 2, lines 10-15).

Claims 67-69, and 71 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dalton et al in view of Herman as applied to claims 65 above, and further in view of Vandenbelt et al (US 5,457,613) and in view of Holat (US 6,036,810).

Regarding claims 67-69 and 71 Dalton et al in view of Herman discloses all the limitations of the claimed invention as cited above including a light source, body and power source, but does not discloses the a decorative foil placed beneath at least one translucent side cover.

Regarding claim 71, Vandenbelt et al ('613) discloses a card light flashlight comprising of a light source 26, a power source 22, and a cover 54 that houses a casing 14 that houses the light source and power source and column 4, lines 2-7, teaches that an imprinted media may be apply to the casing.

Regarding claims 67-68 does not disclose a holographic foil sheet.

Regarding claims 67-68, Holat ('810) discloses holographic foil sheet 10 having a decorative image 12.

Regarding claim 69, Vandenbelt in view of Holat does not disclose that the covers are dent resistant and made of a polycarbonate.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the casing of a polycarbonate material being dent resistant, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability of the intended use as a matter of obvious design choice. *In re Leshin, 125 USPQ 416*.

Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to combine the LED flashlight of Dalton et al with the decorative flashlight of Vandenbelt et al along with the holographic stamp of Holat in order to provide a flashlight that is small and decorative as taught by Vandenbelt (column 2, lines 10-15).

Claims 72-76 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dalton et al in view of Herman in view of Vandenbelt et al (US 5,457,613) and in view of Holat (US 6,036,810).

Regarding claim 72, Dalton et al ('990) discloses a flashlight comprising of a light emitting diode 36 having a first and second leads 38, 40, a power source 30 having a first and second side, a body 21 made of polymeric material (column 2, lines 14-20) to receive the battery (figure 3) and column 3, lines 1-9 teaches that a switch is operable to close a circuit including a light source and power supply.

Regarding claim 72, Dalton et al does not disclose the body of the cover having at least one or two sides being made of a translucent material.

Regarding claim 72, Herman ('630) discloses a battery-operated lighting device having a first and second body 1, 1A, a battery 11A, a light source 15A and in claim 1 of the prior art of Herman teaches that at least one of the bodies are translucent.

Regarding claims 72-76 Dalton et al in view of Herman discloses all the limitations of the claimed invention as cited above including a light source, body and power source, but does not disclose the a decorative foil placed beneath at least one translucent side cover.

Regarding claims 72-73 and 75, Vandenbelt et al ('613) discloses a card light flashlight comprising of a light source 26, a power source 22, and a cover 54 that houses a casing 14 that houses the light source and power source and column 4, lines 2-7, teaches that an imprinted media may be apply to the casing.

Regarding claim 73 does not disclose a holographic foil sheet.

Regarding claim 73, Holat ('810) discloses holographic foil sheet 10 having a decorative image 12.

Regarding claims 74 and 76, Vandenbelt in view of Holat does not disclose that the covers are dent resistant and made of a polycarbonate.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the casing of a polycarbonate material being dent resistant, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability of the intended use as a matter of obvious design choice. *In re Leshin, 125 USPQ 416*.

Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to combine the LED flashlight of Dalton et al with the decorative flashlight of Vandenbelt et al along with the holographic stamp of Holat in order to provide a flashlight that is small and decorative as taught by Vandenbelt (column 2, lines 10-15).

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 48, 62, 65 and 72 provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 14 of copending Application No. 10/045,231. Although the conflicting claims are not identical, they are not patentably distinct from each other because the ('231) in the claims cite a light emitting diode, a power source, a housing enclosing the battery and light source, the housing having a first and second side and a switch next to the power source.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

### ***Response to Arguments***

Applicant's arguments with respect to claims 44-76 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John A. Ward whose telephone number is 571-272-2386. The examiner can normally be reached on Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sandra O'Shea can be reached on 571-272-2378. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JAW  
September 30, 2004

AU 2875



**JOHN ANTHONY WARD  
PRIMARY EXAMINER**